रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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सं. 31] नई दिल्ली, अगस्त 22—अगस्त 28, 2021 शनिवार/ श्रावण 31—भाद्र 6, 1943
No. 31] NEW DELHI, AUGUST 22—AUGUST 28, 2021, SATURDAY/ SRAVANA 31 –BHADRA 6, 1943

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

विदेश मंत्रालय
(सी.पी.वी. प्रभाग)

नई दिल्ली, 13 अगस्त, 2021

का.आ. 591.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, बैरूत में श्री समीर कुमार खवास, सहायक अनुभाग अधिकारी को दिनांक 13 अगस्त 2021 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2018]
ब्रह्म कुमार, निदेशक (सी.पी.वी.)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 13th August, 2021

S.O. 591.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Samir Kumar Khawas, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Beirut to perform the Consular services with effect from 13 August, 2021.

[F. No. T-4330/01/2018]

BRAMHA KUMAR, Director (CPV)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 19 अगस्त, 2021

का.आ. 592.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसारण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सर्वाजनिक क्षेत्र के उपक्रम के निम्नलिखित कार्यालय को, जिनके 80 या अधिक प्रतिशत कर्मचारी वृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है,

अधिसूचित करती है:-

ऊना टर्मिनल,
इंडियन ऑयल कॉर्पोरेशन लिमिटेड,
(विपणन प्रभाग),
ऊना टर्मिनल, गाँव पेखूबेला,
जिला ऊना, हिमाचल प्रदेश - 174303

[फा. सं. 11012/3/2021-ओएल]

शोभना श्रीवास्तव, उप निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 19th August, 2021

S.O. 592.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Public Sector undertaking under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more percent of the staff have acquired working Knowledge of Hindi:-

Una Terminal,
Indian Oil Corporation Limited,
(Marketing Division),
Una Terminal, Village Pekhubela,
District Una, Himachal Pradesh – 174303

[F. No. 11012/3/2021-OL]

SHOBHANA SRIVASTAVA, Dy. Director (OL)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 23 अगस्त, 2021

का.आ. 593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, आईसीआईसीआई प्रूडेंशियल लाइफ इंश्योरेंस कंपनी लिमिटेड मुंबई; क्षेत्र प्रबंधक, आईसीआईसीआई प्रूडेंशियल लाइफ इंश्योरेंस कंपनी लिमिटेड, जौनपुर (यूपी) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री ओम प्रकाश राय, कार्यकर्ता के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 62/2010) प्रकाशित करती है जो केन्द्रीय सरकार को 23.08.2021 को प्राप्त हुआ था।

[सं. एल-17012/17/2009-आईआर-(एम)]

डी. गुहा, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 23rd August, 2021

S.O. 593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/2010) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Managing Director, ICICI Prudential Life Insurance Co. Ltd. Mumbai; The Area Manager, ICICI Prudential Life Insurance Co. Ltd., Jaunpur (UP) and Shri Om Prakash Rai, Worker which was received by the Central Government on 23.08.2021.

[No. L-17012/17/2009-IR (M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE SRI SOMA SHEKHAR JENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 62 of 2010

Between:-

Shri Om Prakash Rai
S/o Shri Baikunth Rai,
64-T/5 A, Sainik Colony, Sulemsarai
ALLAHABAD.

AND

1. The Managing Director
   M/s. ICICI Prudential Life Insurance Co.Ltd.
   ICICI Prolife Tower, 1089 Appa Saheb Martha Marg,
   Prabha Devi,
   MUMBAI-400025.

2. The Area Manager,
   ICICI Prudential Life Insurance Co. Ltd.
   119 GRN Complex Haribandhanpur,
   Jessy Chauraha
   Jaunpur Distt. (U.P)-

AWARD

1. Central Government, MOL, vide notification No. L-17012/17/2009-IR (M) dated 28.06.2010 has referred the Industrial Dispute to this Tribunal for adjudication.

2. This award arises in response to the reference made by Government of India, Ministry of Labour department in exercise of the powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby refers the said dispute for adjudication to the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur. The Reference is stated as follows:-

"Whether Shri Om Parkash Rai, Unit Manager in ICICI Prudential Life Insurance Company Ltd. Jaunpur is a workman as defined under ID Act,1947? If so, whether the action of the management of M/s. ICICI Prudential Life Insurance Company Ltd., in terminating the services of Sri Om Parkash Rai w.e.f 25/2/2009 is justified? What relief the workman concerned is entitled to and from which date?"

3. Claimant in his claim statement stated that Claimant joined the service as Unit manager on 09.12.2007 after qualifying the written examination and interview of ICICI Prudential Life Insurance Company Ltd. and was selected for the post of Unit Manger. He was posted in Jaunpur and became permanent on 10.03.2008. He also stated that he was an ex-service man from Army and getting a salary of Rs 5,000 per month. Claimant alleged that his service was terminated illegally from 25.02.2009 on the ground that he failed to achieve the required minimum target. A show cause notice was served to him on 23.01.2009 and claimant replied on 01.02.2009. But his service was terminated without considering his reply which is unjust, unfair, illegal and against the law of natural justice He further alleged that his service was terminated on the ground of failing to achieve the target but no such condition was mentioned in the joining letter. He further stated that he qualified as workman as per the definition stated in section 2 (L) of the Industrial Dispute Act and also qualifies the continuous service defined under section 25(B) of the Industrial Dispute Act. Claimant further stated that he worked continuously for the employer from 09.12.2007 to 24.02.2009 which is more than 240 days. Now Claimant is economically crippled and praying for relief. He demanded Rs 1,75,344 X 9 years=Rs 15,78,096/- as his salary was at the time of permanent joining was Rs 1,75,344 annually along with an interest of 8% annually and any other benefit which deemed fit in the wisdom of Hon'ble Tribunal.

4. Contents of the written statement submitted by OP no.1 may be summarized as follows:-

The applicant was appointed by the Company as a Unit Manager on 1st Feb, 2008. His annual salary was 1,75,344/- and was discharging managerial, executive and administrative nature of duties. Further, he was supervising a team of nineteen individual advisors to garner insurance business for his region. It is pertinent to mention here that the applicant was responsible for recruitment, training and supervising insurance advisors of the Company, mapped under him, to provide a better understanding of market/ products, monitor and review the advisors' performance, guide them to achieve business targets, supervising and training the advisors mapped to him for customer meets on a regular basis for achieving service standards, deriving sales strategy for his advisors and executing the same through supervision and constant monitoring. The applicant, being a manager, was also authorized and entitled for allowances and benefits for arranging sales call, customer meets, arranging insurance advisor meets etc, with the perspective of designing and implementing business strategies for his region. Thus, U/s 2(s) (iii) (iv) of the Act the applicant is excluded from the category of a workman.

The applicant during his employment was required to maintain discipline and to abide by policies and procedures of the Company including Employee Service Rules. That the termination of the applicant is legal, valid and binding as it was in accordance with the Employee Service Rules, 2009 of the Company. The termination of the service of the applicant was also in accordance with the employment agreement and employee service rules and Code of Conduct of the Company. Amongst other conditions, the applicant service was liable to be terminated by the Management Company without assigning any reason by giving a 30 day notice or on payment of an amount equivalent to 30 days base salary in lieu of notice period. The services of the applicant was liable to be terminated on the ground of non-performance as per the Performance Improvement Programme (PIP) Policy as per clause 9 of Terms and Conditions of Employee Service agreement.

The non applicant submits that the services of the applicant were discontinued as he was unable to meet the minimum performance as expected from him against the sales targets and considering his poor performance and not meeting the set targets as per the Policy of the Company, the Company has terminated the services of the applicant as per the terms and conditions of the employment agreement and Employee Service rules of the Company.

The Company has made full and final settlement with the applicant and made an ex-gratia payment of 30 days in lieu of notice period to the applicant.

The Company decided to terminate the service of the Applicant as per the terms and conditions of Employment of the Company. On February 25th 2009, applicant was terminated from service due to poor performance and the Company made full and final settlement with the applicant by paying ex-gratia payment of 30 days in lieu of notice period to the applicant.

The applicant was aware of all the responsibilities and duties of a Unit Manager and he was required to train and supervise the Insurance advisors but the applicant regularly failed to achieve the minimum performance target.

Points to be answered in this proceeding are as follows:-

1. Whether Om Prakash Rai can be accepted as workman under Industrial Disputes Act.

2. Whether termination of Om Prakash Rai from the job under ICICI Prudential Life Insurance Company Limited (here-in- after stated as the employer) is legally valid.

Right from the beginning the employer has contended that the claimant Om Prakash Rai is not a workman and on the other hand the claimant has asserted that his designation as unit manager was nothing but glorified position. In other words the claimant asserts that he falls in the compartment of workman. It is true that in Annexure-I the position Unit Manager is found (Annexure-I containing the grades of executives). It is almost uncontroverted that Om Prakash Rai was offered appointment by letter dated 10.03 2008 of the employer with designation Unit Manager in grade-I with basic salary 54,000 per annum, City Compensatory Allowance 25,000 per annum, Personal Pay 30268, HRA 32,400, Conveyance Allowance 96,00, Medical Reimbursement 15,000, Employers Contribution to PF 6,480, Employers Contribution to Gratuity 2,596 and Total Cost to the company 1,75,334. From the Employee Service Rules, 2009 it is well found that the explanatory definition of the employees covers the "employees" inclusive of employees in probation, Management trainees, Management Associates, Executive trainees and employees on contract but excludes insurance advisors/agents, business partners, Recruitment Officers, Project Trainees, casual / temporary employees of contractors, of vendors and such other classes of persons who work on a job or work contract and not on a direct employment of with the company.

From the aforesaid explanation it is crystal clear that the insurance advisor/agents are not the employees of the ICICI Prudential Life Insurance (employer).

As per the Employee Service Rule 2009 the manager was assigned supervisory and administrative functions of the team consisting of Insurance Advisors. From the aforesaid job description even though Om Prakash Rai was not part of any administrative decision making process of any managerial exercise his work included supervisory exercise in respect of the performance of the Insurance Advisors. He was assigned employee number 549128 and his emoluments from 1st February 2008 up to 25th February 2009 included:-

Feb-09	Earnings	Deductions
Basic	4,018	
HRA	2,411	
CONVEYANCE	714	
PERSONAL PAY	2,252	
CCA	1,860	
Fcp Reimbursements		
Medical		1,284
Others		
Leave Encashment @ Basic Rs 4500 /30 X 25 days	3,750	
Misc. Payout . 4500	4,500	
Deductions		
Provident Fund		482
Income Tax		14
Total	19,505	1,780
Total Amount Due to Employee/(Recoverable from Employee)		17,725

From the above stated wage structure it is crystal clear that Om Prakash Rai was beyond the compartment of workmen. The point is answered against the claimant .

Point No. 2

To put an end to the dispute as referred to this Tribunal all the points are required to be answered. Though it is held that the status of Om Prakash Rai as unit manager grade 1 was not of workman it is found that the claimant was terminated from the employment by letter dated 25.02.2009 and 26.02.2009 issued by the employer. On behalf of the employer it has been submitted that the employer had every right to terminate the service of the claimant even without notice. It is further submitted on behalf of the employer that that the claimant was under probation and the employer had not confirmed his employment in the private insurance company. On going through materials produced before the Tribunal it is crystal clear that the term 'employee' includes an employee in probation. One document performance evaluation of claimant shows that in by July 31st 2008 he had achieved 38% of the target by 30th October 2008 he had achieved 34% and December 31st 2008 the employee had achieved 29% of the target. On careful analysis of the table performance improvement plan (PIP) in respect of employee it is well found that he had achieved consistently with an increasing trend in sales achievement. Needless to say by December 31st 2008 the target was almost doubled that fixed before July 31st 2008. Insurance subscription cannot be achieved by unethical solicitation. Though there is a provision in the rules 18(2) for termination of the job of employees which enjoins them to achieve the target it cannot be concluded that said provision can be invoked against the employees without appreciation of the difficulties confronted by the employee. For the sake of clarity the claimant was not involved in any misconduct as found from the record. His explanation dated February 1st 2009 in the matter of termination of service reveals that he failed to achieve the target due to market losses and customers were afraid of investing money. Though it was contended on behalf of opposite party employer that claimant petitioner was receiving Army pension regularly the contention has got little relevance in regard to the subject matter of reference .It may be stated that the claimant petitioner is an ex-army man and for his previous service in army he has been conferred the privilege of drawing army pension. The opposite party employer has no right to raise the point of army pension in this reference proceeding.

In 2010 LLR 677 Senior Superintendent Telegraph (Traffic) Bhopal vs Santosh Kumar Seal and Ors. It has been observed by the Hon'ble Supreme Court as follows;-

It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back-wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. It would be, thus, seen that be a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly , daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has not distinguished between the daily wager who does not hold a post and a permanent employee.

It is seen that he was terminated without any enquiry. Though it is alleged that he was remaining absent from duties it has not been clearly stated the exact date and time he was found absent. Habitual absenteeism can be ascribed to an employee who repeatedly remained absent three times or more within a period of 12 months. On careful appreciation of the materials produced before this Tribunal it can be logically concluded that the termination of the job as unit manager by the employer is found to be an example of exercise of employer's predominant arbitrary choice.

Performance during Goal Sheet Period for In Category A2:

During the Goal Sheet Period an Applicable Employee in Category A2 will be evaluated at the end of three months of his goalsheet period (i.e. 5 months initial Goalsheet and the 6 Months subsequent Goalsheet) based on his monthly targets mentioned in his Goal Sheet.

In case he fails to achieve/score 25% or of the monthly targets of the overall Goal Sheet period (5 months initial Goalsheet and the 6 months subsequent Goalsheet), he will be given two months time to improve his performance. This performance monitoring framework is termed "Back on Track" (BOT). During these two

months he would be required to achieve 40% of the monthly target for the next three months. In case he fails to achieve the said target in the given three months he would be liable to be terminated.

In the view of the discussion stated above it can be concluded that the termination of Om Prakash Rai as unit manager by ICICI Prudential (employer) does not pass through the test of reasonableness. In other words the termination of Om Prakash Rai is contrary to Employees Service Rules, 2009 of the ICICI Prudential Life Insurance. Since the claimant is not covered under the definition of workman no relief can be granted. The reference is accordingly answered and disposed of. Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 25 अगस्त, 2021

का.आ. 594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसस सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण–सह–श्रम न्यायालय, गोदावरिखानी के पंचाट (संदर्भ संख्या 148/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.08.2021 को प्राप्त हुआ था।

[सं. एल-22013/01/2021-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 25th August, 2021

S.O. 594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.148/2004) of the Industrial Tribunal-cum-Labour Court, Godavarikhani as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 16.08.2021.

[No. L-22013/01/2021-IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI

Present: SMT. GVN.Bharatha Laxmi, Chairman-cum-Presiding Officer

TUESDAY, ON THIS THE 23rd DAY OF MARCH, 2021

I.D.No. 148 of 2004

Between:-

M. Komaraiah, E.C. No. 2639457, Ex. Coal Filler, RK-5 Incline,
S/o.Rayamallu, age 36 years, R/o.Ryakaldevpally village,
Eligaid Mandal, District Peddapalli – 505 185, Telangana State. ... Petitioner

AND

1. The General Manager, Singareni Collieries Company Ltd., Srirampur Area, Srirampur, District Adilabad, A.P.
2. The General Manager, Singareni Collieries Company Ltd., Mandamarri, District Adilabad, A.P.
3. The Superintendent of Mines, S.C. Co. Ltd., RK-5 Incline, Ramakrishnapur, District Adilabad, A.P.
4. The Colliery Manager, S.C. Co. Ltd., RK-5A Incline, Mandamarri, District Adilabad, A.P. ... Respondents

This case coming before me for final hearing in the presence of Sri.B.Amarender Rao, Advocate for the Petitioner and of Sri T.Ravinder Singh, Counsel for the Respondents; an d having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This is a petition filed under section 2-A (2) of Industrial Disputes Act by Sri. M. Komaraiah/ Petitioner, E.C. No.2639457, Ex.Coal Filler praying to set aside the dismissal order dt.05-11-1998/09-12-1998 passed by the 1st respondent and direct the respondents company to reinstate him into service with continuity of service and all other consequential benefits including full back wages.

2. In this case, this Court passed Award dt.01-04-2006 in favour of the petitioner/workman, which was assailed by the respondents' company before the Hon'ble High Court in WP.No.19992/2006. Further, the order dt.16-02-2016 passed in EP.No.16/2014 and consequential order dt.07-06-2016 passed in E.A.No.2/2016 were also assailed by the respondents' company in another WP.No.24147/2016. Both the writ petitions were dismissed by the Hon'ble High Court by a common order dt.18-04-2017 by upholding the Award and Orders of this Court in I.D.No.148/2004 and E.A.No.2/2016 in EP.No.16/2014. Against the common order dt.18-04-2017 passed in the above (2) Writ Petitions, the respondents' company filed Writ Appeal Nos.1414/2017 and 1436/2017. The Hon'ble High Court passed Common Judgment dt.22-01-2020 in the above Writ Appeals and remitted the matter back to this Tribunal to decide the following issue basing on the pleadings and evidence submitted by the parties:-

> *"Whether the I.D., filed by the petitioner-employee with regard to dismissal order, dated 05-11-1998/09-12-1998, is valid in view of the subsequent reinstatement made in the year 2000 within a period of three months from the date of receipt of a copy of this order".*

3. On receipt of the Common Judgment dt.22-01-2020 in the Writ Appeals from the Hon'ble High Court on 18.01.2021, the ID was restored to file and notices were ordered to both parties on 27-01-2021. Later arguments of both sides were heard on 19-03-2021.

4. The brief averments of the petition are as follows:-

4(a). That the petitioner/workman was appointed as Badli Filler by the respondents' company under the dependant employment scheme in place of his father Sri.M.Rayamallu, Ex.Coal Filler, w.e.f., 27-02-1993. Later he was promoted as Coal Filler, during the year 1996 and he maintained good and clean record. During the year, 1998 the petitioner/workman was working under the control of 3rd respondent at RK-5 Incline. He got 208 physical musters during that year of 1998. But charge sheet dt.12-02-1998 was issued to the petitioner/ workman alleging his previous absenteeism of 1997 as follows:-

"Habitual late attendance or habitual absence from duty without sufficient cause."

4(b). During the previous year of 1997, the petitioner/workman suffered from severe jaundice, "Infective Fever" and ill-health. He was compelled to undergo treatment in the S.C.Co.Ltd., hospital, Government hospitals and private hospitals also for recovery of his health. As such, his physical musters fell short of the required 100 musters for the year, 1997. The petitioner/workman submitted the medical certificate to the 3rd respondent authorities and he was taken to duty. He improved his attendance and put in 208 physical musters during the year, 1998. Thus there is sufficient cause for the alleged absence of the petitioner/workman during the previous years. Therefore, it cannot be termed as misconduct, warranting the extreme punishment of dismissal from service. The 1st respondent got conducted a farce of domestic enquiry, illegally dismissed the petitioner/workman from service, through reference No.P/RKP/16/98/3361, dt.05-11-1998/9-12-1998, under the pretext of his previous absenteeism. Further, no show cause notice was issued to the petitioner/workman proposing the punishment, before passing the dismissal order. The extreme punishment of dismissal from service amounts to economic death of the petitioner/workman and it is shockingly disproportionate with the gravity of previous absence of the petitioner/workman. The conduct and attitude of the enquiry officer indicates the pre-determined notion of the management to implicate the petitioner/workman in the charge. In fact, that the petitioner/workman himself was working regularly and put in 208 physical musters. There was no need for the respondents/ management to dismiss him from the service. As per the settlement the petitioner/workman was taken as Badli Filler by proceedings, dt.28-06-2001 by the 2nd & 4th respondents. Unfortunately, the petitioner/workman met with mine accident and sustained grievous leg injuries and underwent surgery and prolonged treatment in the S.C.Co., Ltd. Hospital. As such, he could not complete 190 musters as Badli Filler by 30-10-2002. But the 4th respondent abruptly terminated the services of the petitioner/workman through office order

No.MMA/KK-5A/P007/2869, dt.19-10-2002 without conducting any sort of domestic enquiry. Hence, the petitioner/workman challenged his dismissal orders dt.05-11-1998/09-12-1998 and 19-10-2002 with a prayer to reinstate him into service with continuity of service and all other consequential benefits.

5. On the other side the respondents/management has filed counter by admitting the employment of the petitioner/workman with the respondents'/ company, however, inter-alia contended that the Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29.12.2000 for adjudication of Industrial Disputes and the petitioner/workman ought to have approached the said Tribunal for the redressal of grievance, if any. But the petitioner/workman conveniently avoided to file his petition before the said Tribunal established by the Central Government, for the reasons best known to him and this petition filed under section 2-A (2) of ID Act before this Tribunal is not maintainable under law. The appropriate Government for Coal Mining Industry is the Central Government and the State Amendment Act is not applicable to the respondents' company and hence this petition may be dismissed on this ground alone.

5(a). Without prejudice to its rights in respect of above objection, it is submitted that the petitioner/workman was appointed as Badli Filler as dependant of his father and as per the vacancy position, he was promoted as Coal Filler. The petitioner/workman had put up 33 days of attendance during the year 1997 at RK-5 Incline, Mandamarri. He was issued with the charge sheet, dt.12-02-1998 for misconduct of absenteeism for duty under clause No.25.25 of the Standing Orders of the Company. He did not submit any explanation to the charge sheet and not submitted any medical certificate to prove his illness for his absenteeism, at the time of enquiry. During enquiry, he admitted the charges leveled against him and that he was absent in the year 1997 without any sanctioned leave, due to ill-health and family problem. The charges are proved in the enquiry and vide letter dt.11-09-1998, the petitioner/workman was supplied the copy of enquiry proceedings and report with an advise to make his representation against the findings of enquiry officer. The petitioner/workman submitted the representation dt.15-10-1998 to excuse him on humanitarian grounds and that he will be careful hereafter. The petitioner/workman had attended (60) days in the year 1996, (33) days in the year 1997 and (152) days in the year 1998. As the past performance of petitioner/workman is not good, he was terminated vide letter dt.09-12-1998. The respondent company as per the terms of MOS dt.21-02-2000 and as per the recommendations of the high power committee, appointed the petitioner/ workman as Badli Filler for one year period on trial basis, vide Office Order dt.28.06.2001. The petitioner's services shall stand automatically terminated on completion of (12) months period from the date of his appointment and he has to put (190) actual musters during trial period of (12) months to consider for his re-appointment afresh as Badli Filler. The petitioner/workman reported for duty on 30-10-2001 as Badli Filler for (12) months on temporary basis. His services were automatically terminated on completion of (12) months as per the office order, dt.28-06-2001. He had put in only (94) actual musters during the trial period of (12) months and he was not considered for re-appointment afresh as Badli Filler. He never met with mine accident during his trial period of (12) months and never took treatment in the respondents' hospital. As his appointment is purely temporary for (12) months period, his services will be terminated automatically after completion of (12) months. He failed to utilize the (12) months trial period as the MOS, dt.21-02-2000. The respondents' company is doing business of winding and selling of coal by employing more than 90,000 persons. If the employees abstain/abscond for duties, the required production targets will not be achieved resulting in huge loss to the respondents' company. As such, absenteeism is a misconduct as per the Standing Orders of the Company. The other allegations of the petition are denied and the respondents' company prays to dismiss the petition filed by the petitioner/workman.

6. In order to prove the contentions the petitioner/workman has got marked Ex.W-1 to Ex.W-27 and the Respondents/corporation has got marked Ex.M-1 to Ex.M-10.

7. Arguments of the learned counsel for petitioner/workman as well as learned counsel for the Respondents/management heard.

8. Basing on the pleadings of the petitioner/workman, respondents/ company and as per the common judgment of the Hon'ble High Court, dt.22-01-2020 in Writ Appeal Nos.1414 and 1436 of 2017, the following points arise for consideration:-

1. ***Whether the I.D. filed by the petitioner-employee with regard to dismissal order, dated 05.11.1998/09.12.1998, is valid in view of the subsequent reinstatement made in the year 2000?***

2. ***Whether the petition is maintainable under Section 2-A (2) of the I.D. Act before this Industrial Tribunal?***

3. ***Whether the domestic enquiry is valid?***

4. ***Whether the punishment of dismissal from service is justified and proportionate?***

9. From the pleadings of the petitioner/workman and Respondents/ management these are the admitted facts that the petitioner/workman was appointed as Badli Filler as dependant of his father and later he was promoted as Coal Filler. The petitioner/workman had put up 33 days of attendance during the year 1997 at RK-5 Incline, Mandamarri and he was issued with the charge sheet, dt.12-02-1998 under Ex.M-1 with an allegation that the petitioner/workman has absented for his duties unauthorizedly. Enquiry was conducted by recording the enquiry proceedings under Ex.M-2 and Ex.M-3 is the enquiry report. Further, the petitioner/workman was supplied the copy of enquiry proceedings and report with an advice to make his representation against the findings of enquiry officer and same was acknowledged by petitioner/workman under Ex.M-4. Accordingly, the petitioner/workman submitted his representation dt.15-10-1998 under Ex.M-5. The respondents'/management dismissed the petitioner/workman from service by dismissal order, 09-12-1998 under Ex.M-6. Further, the respondent company as per the terms of MOS dt.21-02-2000 under Ex.M-7 and as per the recommendations of the high power committee, appointed the petitioner/ workman as Badli Filler for one year on trial basis, vide Office Order dt.28.06.2001 under Ex.M-8. Attested copy of dismissal order under Ex.M-9 is same dismissal order marked as Ex.M-6. Likewise attested copy of MOS, dt.21.12.2000 is the same MOS marked as Ex.M-10.

9(a). Further, on behalf of the petitioner/workman Ex.W-1 to W-27 were marked. Ex.W-1 is the appointment order of petitioner/workman, dt.27.02.1993. Fitness certificate under Ex.M-2 shows the petitioner/workman took treatment from 15.04.1997 to 31.10.1997 and he was made fit for duty from 01-11-1997. Explanation, dt.09.03.1998 of the petitioner/workman to charge sheet is marked as Ex.W-3. The pay slip for the month of December, 1998 under Ex.W-4 shows that the petitioner/workman was put in total 208 musters during 1998. Ex.W-5 is the dismissal order dt.05-11-1998/09-12-1998 which is also marked as Ex.M-6 and Ex.M-9. Appointment order, dt.20-10-2001 of petitioner/workman as Badli Filler for one year trial basis is marked as Ex.W-6, which is also marked as Ex.M-8. The Singareni Hospital OP slips, fit certificate and discharge card of the petitioner/workman from 27.12.2001 to 27.12.2002 are marked as Exs.W-7 to Ex.W-25. The pay slip of petitioner/workman for the month of August, 2002 under Ex.W-6 shows that he put in 74 total musters during one year trial period, besides the above treatment period from 27.12.2001 to 27.12.2002. The office order, dt.19-10-2002 under Ex.W-27 shows that the petitioner/workman at Sl. No.2 was terminated from service w.e.f., 30-10-2002, on completing one year trial period.

POINT No. 1:-

10. It is argued by the learned counsel for the respondents that while the petitioner was working as Coal Filler, he issued with a charge sheet due to his un-authorized absenteeism during the year 1997. After conducting regular domestic enquiry, he was dismissed from service by order dt.09.12.1998, under Ex M-6. Later, a "Memorandum of Settlement" dt.21.02.2000 was arrived at and signed between the management of SCCL and the union, under Ex M-7. As per the said MOS, Item No.26 (Demand No.38) deals with re-appointment of workers dismissed on account of absenteeism during the period from 01.01.1997 to 31.12.1999. In terms of the said MOS dt.21.02.2000, the respondent/ management appointed the petitioner/workman as "Badli Filler" for (12) months trial period on 28.06.2001. His services shall stand terminated automatically on completion of 12 months period from the date of appointment. He has to put in 190 actual musters during the trial period of 12 months to consider for re-appointment afresh as Badli Filler. But, since the petitioner had put in only (74) musters in (12) months period, his case was not considered for re-appointment as afresh Badli Filler as the terms of MOS. The learned counsel for the respondent/management further contended that after his appointment as Badli Filler for (12) months trial period under the MOS as above, the petitioner/workman cannot raise this I.D.No.148 of 2004 challenging his dismissal order dt.09.12.1998. Since the settlement is binding between parties, the petitioner/workman is estopped from challenging his previous dismissal order dated 09.12.1998. Therefore, he prays for rejecting the I.D as not valid and not maintainable. But, the learned counsel for the respondent/management not cited any judgments of the Hon'ble Supreme Court and Hon'ble High Court, to support his above arguments and contentions.

10(a). On the other hand, it is argued by the learned counsel for the petitioner/ workman that there is no estoppel against Statute. The estoppel is unfounded and there cannot be any agreement to waive the right of the petitioner/workman to assail the dismissal order dt.09.12.1998 under Section 2-A (2) of the Act, which is available to a workman. Further, he argued that the "Memorandum of Settlement" dt.21.02.2000 under Ex M-7 was arrived at and signed between the management of SCCL and the union. There is no such "Estoppel or Waiver" clause in the

said "Memorandum of Settlement" at all. The plea of estoppel has no application for enforcement of fundamental rights. There can be no waiver of fundamental rights. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forgo his precious personal freedoms on promise of transitory, immediate benefits. The learned counsel for the petitioner/workman further argued that unless relevant Statute specifically bars such remedies, principles of estoppel, waiver or acquiescence cannot be invoked in this case. Further, he contends that acceptance of limited relief granted to a litigant at one stage of proceedings shall always be without prejudice to his right to seek further redressal. Hence, the subsequent appointment of petitioner/workman as Badli filler for (12) months trial period as per the MOS cannot create any Estoppel/waiver. Therefore, the learned counsel for the petitioner contended that the I.D. filed by the petitioner/workman with regard to his dismissal order dated 05.11.1998 / 09.12.1998, is valid and maintainable, even after the subsequent appointment as Badli Filler for (12) months trial period made in the year 2000.

10(b). In support of his above arguments and contentions, the learned counsel for the petitioner/workman cited the following judgments rendered by the Hon'ble Supreme Court and Hon'ble High Court:-

(1) Hon'ble SUPREME COURT: AIR 1986 SC 180 CONSTITUTIONAL BENCH –

Between: Olga Tellis and others Vs. Bombay Municipal Corporation & ors.

Relevant Paras: 28, 29 & 30: Their Lordships of the Hon'ble Supreme Court held that "No estoppel against Fundamental Rights (OR) waiver of Fundamental Rights". There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land, but it is the source and sustenance of all Laws. The plea of estoppel has no application for enforcement of fundamental rights. There can also be no waiver of fundamental rights. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forgo his precious personal freedoms on promise of transitory, immediate benefits.

(2) Judgment of Hon'ble SUPREME COURT: AIR 2015 SC 2434: DB –

Between: Shashikala Devi Vs. Central Bank of India & others.

Their Lordships of the Hon'ble Supreme Court held that "Intention to waive right, Waiver of legally enforceable rights, has to be clear, unequivocal, conscious and with full knowledge of consequences. Interpretation which tends to restrict, narrow down or defeat its beneficial provisions has to be avoided.

(3) Judgment of Hon'ble HIGH COURT: 2003 (1) ALD 334: DB –

Between: APSRTC & Ors Vs. NMU, Mahabubnagar & anr.

In this Case, on Appeal the punishment of removal was reduced to with-holding one increment and denying back wages. Having joined duty, the workman approached Industrial Tribunal. It was contended by the RTC that the workman, without demur, accepted the order and joined duty as per the appellate order, it was not permissible for him to institute I.D subsequently and such action is hit by principle of estoppel. Their Lordships of the Hon'ble High Court held that there is no question of estoppel arises; and the workman was not estopped from seeking further relief.

(4) Judgment of Hon'ble HIGH COURT: 2006 (2) ALD 353 –

Between: K. Karunakar Vs APSRTC, Hyderabad & Ors.

In this case, a driver of APSRTC was dismissed from service; and his appeal allowed in part setting aside removal order and directing reappointment as "Fresh Candidate", denying him benefit of past service etc., The petitioner raised Industrial Dispute in Labour Court U/Sec. 2-A (2) of the Act. Labour Court rejected the Industrial Dispute by as not maintainable on the sole ground that order of removal ceased to exist, once he came to be reinstated. Their Lordships of the Hon'ble High Court held that "Refusal to entertain dispute U/Sec. 2-A (2) of the Act on the ground that cause of action as it existed at stage of initiation of proceedings, no longer subsists would subvert very purpose of providing such adjudicatory system. Unless relevant Statute specifically

bars such remedies, principles of estoppel, waiver or acquiescence cannot be invoked in such case. That acceptance of limited relief granted to a litigant at one stage of proceedings shall always be without prejudice to his right to seek further redressal".

10(c). In view of the above rival contentions of both parties, I have gone through the entire record placed before this Court and above cited judgments. Admittedly, the petitioner/workman was appointed as Badli Filler, due to Medical Unfit of his father M. Rayamallu Coal Filler, vide Office Order dt.27.02.1993 under Ex W-1. Later he was promoted as Coal Filler and while he was working as such, a charge sheet dt.12.02.1998 was issued under Ex M-1; and finally the respondent/ management dismissed the petitioner from service vide Proc. dt.09.12.1998 under Ex M-6/Ex W-5. Thereafter, a "Memorandum of Settlement" dt.21.02.2000 was arrived at and signed between the management of SCCL and the union, which is marked as Ex M-7. Among several Demands consisting (27) Items, Item No.26 (Demand No.38) of the MOS deals with re-appointment of workers dismissed on account of absenteeism during the period from 01.01.1997 to 31.12.1999, which is extracted below:-

ITEM No.26: Review of cases of workmen dismissed on absenteeism for their re-appointment (Demand No.38)

"The Union has stated that some of the workmen whose attendance was relatively better in the previous years were dismissed, that such cases should be considered for reinstatement, to avoid the hardship to such workmen and their families.

The management has stated that disciplinary action was taken against the chronic long absentees in accordance with the procedure laid down in Company's Standing Orders.

In view of the persistent request made by the union, it is hereby agreed that a High Power Committee headed by Director (PA&W) will examine the cases of workmen dismissed on account of absenteeism during the period from 01.01.1997 to 31.12.1999.

Such of those dismissed workmen who deserve favourable consideration on merits and recommended by the committee will be appointed as Badli Fillers for a period of one year on trial basis. If the workmen on such re-employment do not put in satisfactory attendance of 190 actual musters in a year (trial period), their services would stand terminated at the end of one year without any notice".

10(d). In terms of the above MOS dt.21.02.2000, the petitioner was temporarily appointed as "Badli Filler" for a period of one year on trial basis, by Office Order dt.28.06.2001 under Ex M-8. He was posted to work at KK 5-A Incline, through Office Order dt.20.10.2001 marked as Ex W-6 for a period of one year trial basis. The conditions of appointment Office Order under Ex M-8 at clauses (9) & (10) are: -

"(9) Your services shall stand terminated automatically on completion of 12 months period from the date of your appointment. You have to put in 190 actual musters during the trial period of 12 months to consider for your re-appointment afresh as Badli Filler.

(10) Please note that this appointment is purely temporary and your previous will carry no weightage".

10(e). Admittedly, the petitioner/workman has put-in (74) musters and the SCCL Hospital medical record marked as Ex W-7 to W-25 shows that the petitioner was imparted treatment during the period from 27.12.2001 to 27.12.2002. But, the petitioner's services stood terminated automatically on completion of (12) months i.e., from 20.10.2002 in terms of Officer Order under Ex W-6. Therefore, the termination of service of petitioner as Badli Filler is automatic and no exception can be taken.

10(f). From the above clause of the "Memorandum of Settlement" dt.21.02.2000 under Ex M-7 and above conditions of Appointment Office Order under Ex M-8, it is clear that there is no "Estoppel or Waiver" clause. The petitioner was given (12) months trial period temporary appointment as Badli Filler as per the above MOS along with other dismissed workmen. There cannot be an agreement to waive the right under Section 2-A (2) of the Act available to a workman. In cases where a workman loses length of substantial service by accepting the re-employment, there should be a specific clear clause in the Memorandum of Settlement showing that the dismissed employees/petitioner have agreed to forgo/waive their right to assail the dismissal order or to forgo their past service. But, admittedly there is no such waiver/estoppel clause in the Memorandum of Settlement or in the Office Orders under Ex M-7, Ex M-8 and Ex W-6 respectively. The learned counsel for the respondents did not show any such provision of "Estoppel" dealing with the above situation. No authority on the waiver of

right under Section 2-A (2) of the Act (or) Estoppel was brought to the notice of this Court, by the learned counsel for the respondents company.

10(g). On the other hand, it is clearly evident from above Memorandum of Settlement and Office Orders filed before this Court coupled with the judgments cited by the learned counsel for the petitioner that there is "No Estoppel" against Fundamental Rights (OR) waiver of Fundamental Rights". The plea of estoppel has no application for enforcement of fundamental rights. There can also be no waiver of fundamental rights. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forgo his precious personal freedoms on promise of transitory, immediate benefits.

10(h). Further in the above cited decisions, it is very clearly held that "Intention to waive right, Waiver of legally enforceable rights, has to be clear, unequivocal, conscious and with full knowledge of consequences. Interpretation which tends to restrict, narrow down or defeat its beneficial provisions has to be avoided. Acceptance of limited relief granted to a litigant at one stage of proceedings shall always be without prejudice to his right to seek further redressal. Unless relevant Statute specifically bars such remedies, principles of estoppel, waiver or acquiescence cannot be invoked in such case. There is no question of estoppel arises in this case and the petitioner/workman is not estopped from seeking further relief. The dismissal from service of the petitioner as Coal Filer by order dt.05.11.1998/09.12.1998, in the considered view of this Court, constitutes independent cause of action. Therefore, I hold that the I.D. No.148/2004 filed by the petitioner/workman with regard to dismissal order, dt.05.11.1998/09.12.1998 is valid and maintainable even after his subsequent appointment as Badli Filler made in the year 2000 for a period of one (1) year trial basis. Accordingly, this point is answered in favour of the petitioner and against the respondents.

POINT No. 2:

11. Further, the learned counsel for the petitioner argued that Section 2-A (2) of I.D Act is applicable to the employees working Coal Industry also and hence this petition is maintainable before this Tribunal and that the petitioner is not required to approach the Central Government Industrial Tribunal at Hyderabad. The contentions raised by the respondents in their counter that this Tribunal has no jurisdiction over SCCL are all false and not tenable.

In support of his above contention, he relied on the following decisions:-

1. 2003 (2) ALT – 470. Between: I.L Naidu and others Vs. Union of India and others

In this judgment their Lordships of the Hon'ble High Court held that the contention that Section 2-A(2) of the Industrial Disputes Act, 1947 is not applicable to Government of India undertaking is wholly misconceived. It is not limited to the "State Industries". The provisions of Section 2-A(2) having received the assent of the President, the workmen of Central Government Industry also can raise the dispute Under Section 2-A(2) of the Industrial Disputes Act.

2. 1998 (5) ALD – 16 D.B: Between: U. Chinnappa Vs. Cotton Corporation of India and others

In this case, their Lordships held that there is no warrant to restrict the scope and amplitude of the vide phraseology "any workman" of Section 2-A(2) of the Industrial Disputes Act to the employees working in State Government Industries. It is also applicable to the employees of Central Government Industries and the Industries carried-on under the authority of the Central Government.

11(a). From the above cited judgments, this Court is of the considered view that Section 2-A (2) of the Industrial Disputes Act is applicable to the employees working in the Central Government Industries and SCCL also. Therefore, I hold that this petition is maintainable under Section 2-A(2) of the I.D. Act before this Industrial. The point is answered accordingly.

POINT No. 3:

12. The validity of domestic enquiry was not questioned during the course of hearing arguments. However, a perusal of the record shows that the respondents company followed the procedure while conducting domestic enquiry. The petitioner participated in the enquiry and deposed his statement before the Enquiry Officer. Hence, I hold that the domestic enquiry is valid. The point is answered accordingly.

POINT No. 4:

13. As per the contention of petitioner/workman, the petitioner was dismissed from service by the respondents company vide Office Order dt.05.11.1998/09.12.1998 under Ex M-6. The leveled against the petitioner under Ex M-1 charge sheet is as follows:-

CHARGE:

"25.25 Habitual late attendance or habitual absence from duty without sufficient cause during the year 1997.

13(a). The petitioner has put in only (33) musters during the year 1997 against the minimum (100) musters. The petitioner assailed his dismissal order. It is contended the petitioner was appointed as Badli Filler on 27.02.1993 as a dependant of his father who was retired from service on Medical Invalidation. Later on account of his satisfactory performance he was promoted as Coal Filler during the year 1996 and he has put in about six (6) years of service. During the year 2008, he improved his attendance and has put-in (208) physical musters. But, during the previous year 1997, as the petitioner suffered from severe Jaundice, Infective fever and ill-health, he has put in only (33) musters. He underwent treatment in SCCL Hospitals, Government and private hospitals for recovery of his health. He submitted medical certificates to the 3rd respondent authorities and he was taken to duty. He improved his attendance and put-in (208) musters during the year 2008. The health problems and treatment of the petitioner during the previous year are supported by the medical certificates and there is sufficient cause for his absence. The findings of the Enquiry Officer are highly arbitrary and biased. The improved performance and putting (208) musters during the year 2008 and the ill-health and medical certificates during the previous year 2007 were not considered properly. Therefore, it cannot be termed as misconduct warranting the extreme punishment of dismissal from service. The petitioner improved his attendance to (208) musters even prior to his dismissal from service. Hence, it shows that he was unfairly victimized. The punishment of dismissal from service is shockingly disproportionate. In terms of the Memorandum of Settlement, he was taken temporarily as Badli Filler for (12) months trial period, through Office Order dt.28-06-2001. But as he met with mine accident and sustained grievous leg injuries, he underwent surgery and took prolonged treatment in the SCCL Hospital. Therefore, he prays to allow the petition as prayed for.

13(b). For modifying the punishment of dismissal from service, the learned counsel for the petitioner cited the following decisions:-

(1) Division Bench Judgment of Hon'ble SUPREME COURT: AIR 1988 SC

303: Between: Scooter India Ltd Vs. Labour Court, Lucknow & others:

Their Lordships of the Hon'ble Supreme Court held: "Labour Court having found that enquiry had conformed to statutory prescriptions and principles of natural justice; and **yet** holding that order of termination was not justified and reinstating employee with **75% back wages.** Wide powers are vested in Labour Court or Tribunal; and Labour Court can temper justice with mercy and give an opportunity to an erring workman to reform himself". Order of Hon'ble Labour Court granting reinstatement with 75% back wages was upheld by the Hon'ble Supreme Court.

(2) Division Bench Judgment of Hon'ble High Court in W.A. No.1101/2008 - Between Depot Manager, APSRTC Vs. Labour Court & others:

This Hon'ble Industrial Tribunal, Godavarikhani awarded reinstatement with continuity of service and 50% back wages in absenteeism case. The Hon'ble High Court held that denial of 50% wages was unjustified and their Lordships modified the award for 50% back wages to full back wages.

(3) Judgment of Hon'ble SUPREME COURT: 2009-IV-LLJ-672 (SC) – Between: Coal India Limited & Another Vs. M.K Choudhuri & others:

Their Lordships of the Hon'ble Supreme Court held that: Removal from service of employee for misconduct of absenting without leave – Charge admitted by the employee – Punishment was held harsh and denial of back wages would be sufficient punishment.

(4) Judgment of Hon'ble SUPREME COURT: 2008 LILR 552 (D.B) – Between M.P. Electricity Board and others Vrs., Maiku Prasad:

Their Lordships of the Hon'ble Supreme Court reinstated the workman by awarding 50% back wages in absenteeism case.

(5) Judgment of Hon'ble SUPREME COURT: 2009-III-LLJ-373 (SC) – Between Jagdish Singh Vs. Punjab Engineering College and others:

Hon'ble Supreme Court held that: Major punishment of dismissal from service imposed on petitioner for his guilty of alleged charge of unauthorized absence, is a disproportionate punishment. Having regard to unblemished record of appellant, punishment of dismissal is modified to stoppage of two increments with cumulative effect.

(6) Judgment of Hon'ble High Court in W.P No. 5741/2006: Between: The SCCL Vs Indl. Tribunal-cum-Labour Court & anr:

This Industrial Tribunal awarded reinstatement of workman (Coal Filler) with continuity of service but, without back wages by its Award dt.17.08.2005 in I.D. No. 52/2004. The said Award was upheld and confirmed by the Hon'ble High Court in the above Writ Petition.

13(c). On the other side, the respondents company filed counter denying the averments of the petition. The petitioner put-in only (33) days of attendance during the year 1997 and he was charge sheeted for habitual absenteeism. The respondents company conducted the enquiry fairly; the petitioner participated in the domestic enquiry on 21-3-1998 and admitted the charges. Therefore, the respondents company dismissed the petitioner from service by order dt.5.11.1998/9-12-1998. Later as per the Memorandum of Settlement arrived with the Union, the petitioner was appointed as Badli Filler for (12) months. His services shall be terminated automatically on completing (12) months from the date of appointment. Hence, his services were terminated on expiry of (12) months vide order dt.28-06-2001. He put in only (94) musters during temporary badli filler period of (12) months. If the employees habitually absent, the targets will not achieved. Therefore, the respondents company prays to dismiss the petition, without granting any relief to the petitioner.

14. During the course of hearing, Ex W-1 to 27 were marked on behalf of the petitioner/workman and Ex M-1 to M-10 were marked on behalf of the respondents/management.

15. As per evidence on record, it is the case of the petitioner/workman that during the previous year 1997, he suffered from ill-health and took treatment in SCCL Hospitals and other hospitals. He improved his attendance during the year 1998 and put-in (208) musters. Further during the year 2000, he met with mine accident and underwent surgery in the SCCL hospital. Hence, there is sufficient cause for the absence of the petitioner. The petitioner filed medical record pertaining to his treatment. The medical record filed by the petitioner under Ex W-2, Ex. W-7 to Ex. W-25 shows that he underwent treatment in the SCCL Hospitals & other hospitals. Ex W-2 is the copy of Medical Certificate which shows that the petitioner was given treatment from 15.04.1997 to 31.10.1997 at the Govt. Hospital Karimnagar. This certificate was submitted to the respondents company along with his explanation dt.09.03.1998 given to the charge sheet under Ex W-3. Ex. W-17 certificate issued by the SCCL Hospital & Ex W-18 discharge card issued by the SCCL Hospital clearly show that the petitioner was admitted as in-patient and imparted treatment for about (45) days. Ex W-7 to Ex. W-16, Ex W-19 to Ex. W-25 are the OP slips issued by the SCCL Hospital during the period from 27-12-2001 to 27-12-2002 which show that he was given treatment as out-patient.

16. Further, during the proceedings of enquiry under Ex M-2, the petitioner clearly deposed before the Enquiry Officer that "*Due to my ill-health and due to family problems, I have failed to improve my attendance.* (During the year 1997). *Now my health is improved and also attending to my duties regularly from February 1998 onwards. I assure that I will be regular to my duties in the coming months.*" The representation of the petitioner to the respondents company dt.15.10.1998 along with report of the respondents marked as Ex M-5 clearly proves that by that date the petitioner had put-in (152) musters and (176) tubs filled by him. The Pay Slip of the petitioner for the month of December 1998 under Ex W-4 clearly proves that he had put-in total (208) musters during the year 1998. Thus, it is clearly proved that the petitioner was regularly attending to his duties, improved himself and put-in (208) musters during the year 1998; and after that the respondent dismissed him service my Office Order dt.05-11-1998/09-12-1998.

17. So, on perusal of the entire record, it is a clear case where the medical record produced by the petitioner and his oral evidence for the cause of absenteeism during the previous year 1997 was not considered in proper perspective by the Enquiry Officer and the enquiry findings are wholly arbitrary. The medical record produced by the petitioner clearly show that he was imparted treatment during the charge sheet period from 15.04.1997 to 31.10.1997. The Pay Slip of the petitioner for the month of December 1998 under Ex W-4 clearly proves that he had improved his attendance and put-in total (208) musters during the year 1998. Thus, it is clearly proved that the petitioner was regularly attending to his duties, improved himself and put-in (208) musters during the year 1998.

18. In view of the above evidence placed before this court and the facts and circumstances of the cases discussed supra, this court is of the considered view that the cause of absence and treatment of the petitioner during the year 1997 is substantiated by the medical record. Hence, the petitioner cannot be held guilty of serious misconduct. In fact, as the medical record was produced by the petitioner to the respondents under Ex W-2 and Ex M-5. In view of the plausible explanation of the petitioner supported by the medical documents, this court is constrained to hold that the extreme punishment of dismissal from service is shockingly disproportionate and it is not at all warranted.

19. Further, it is true that after his dismissal from service by order dt.09.12.1998, the petitioner worked under the respondents during (12) months trial period and was imparted treatment at SCCL Hospital till December 2002. This petition is filed in the year 2004. Hence, it cannot be said that there is any abnormal delay in approaching this court. Hence, I hold that it is a fit case to exercise the discretionary powers of this Court Under Sec.11-A of I.D Act and the dismissal order passed by the respondents is liable to be set aside.

20. In view of the facts and circumstances supra, I further hold that the petitioner/workman shall be reinstated in to service as "Coal Filler" with continuity of service and all attendance benefits. The petitioner is out of employment and he is in the pursuit of justice for all these years from 2004 to till date before this Industrial Tribunal in this I.D.No.148/2004 and before the Hon'ble High Court in Writ Petition Nos.19992/2006 & 24147/2016, Writ Appeal Nos.1414/2017 & 1436/2017. He was paid last drawn wages in compliance with Section 17-B of the Act as per the Interim Orders dt.26.09.2006 of the Hon'ble High Court in WPMP No.25236/2006 in W.P. No. 19992/2006 and WAMP No.2644/2017 dt.19.09.2017 in Writ Appeal No.1414/2017. The pay of the petitioner shall be fixed in the Revised Pay Scales/Wage Boards from time to time by giving yearly increments as per continuity of service and all attendant benefits. The respondents' company is liable to pay the consequential difference of wages of Coal Filler to the petitioner up to the date of his reinstatement after deducting the last drawn amounts already paid to him in compliance with Section 17-B of the Act. The petitioner is not entitled to any back wages during the interim period from the date of his dismissal from service w.e.f., 09.12.1998 to till the respondent's company commenced paying last drawn wages in compliance with Section 17-B of the Act as per the Interim Orders dt.26.09.2006 in WPMP No.25236/2006 of Hon'ble High Court. Denial of entire back wages during the above interim period of (8) years from 1998 to till 2006 would be a sufficient punishment to the petitioner. However, the petitioner is entitled to his full salary as Coal Filler only from the date of this Award.

21. In the result, the petition is allowed partly and the dismissal order dt.05.11.1998/09-12-1998 under Ex.M-6 is hereby set aside. The Respondents' company is hereby directed to reinstate the petitioner into service as "Coal Filler" with continuity of service and with all consequential attendant benefits. Accordingly, the pay of the petitioner shall be fixed in the revised pay scales/wage boards from time to time. Admittedly, the petitioner is out of employment and he is in the pursuant of justice from the year 2004 to till date before this Tribunal and before the Hon'ble High Court. He was paid "Last Drawn Wages" in compliance with Section 17-B of the ID Act both during the pendency of WP.No.19992/2006 and W.A.No.1436/2017 i.e., from September, 2006 to till December, 2020. Hence, the Respondents' company is hereby directed to pay the difference of Coal Filler wages to the petitioner till he is reinstated into service, after deducting the already paid amounts in compliance with Section 17-B of ID Act. However, the petitioner is not entitled to any back wages during the interim period of nearly (8) years from the date of his dismissal from service to till Section 17-B wages commenced i.e., from 09.12.1998 to till 26.09.2006. Denial of above interim period back wages would be sufficient punishment to the petitioner. The petitioner is entitled to his salary only from the date of his Award. The Award shall come into force on expiry of (30) days from the date of its publication.

Typed to my dictation to Senior Stenographer, corrected and pronounced by me in the open court, on this the 23rd day of March, 2021.

Smt. GVN. BHARATHA LAXMI, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:-

-Nil-

FOR MANAGEMENT;-

-Nil-

EXHIBITS

FOR WORKMAN:-

Ex.W-1	Dt.	27-02-1993	Appointment order of petitioner
Ex.W-2	Dt.	31-10-1997	Fitness Certificate of petitioner showing fit for duty from 01-11-1997 and treatment from 15-04-1997 to 31-10-1997.
Ex.W-3	Dt.	09-03-1998	Reply of petitioner to charge sheet
Ex.W-4	Dt.	--	Pay slip for the month of December, 1998 showing 208 musters.
Ex.W-5	Dt.	05-11-1998/ 09-12-1998	Dismissal order of petitioner
Ex.W-6	Dt.	20-10-2001	Appointment Order as Badli Filler for (1) year trial basis of petitioner
Ex.W-7	Dt.	27-12-2001	SCCL Hospital OP slip of petitioner from 27.12.2001 to 31-12-2001.
Ex.W-8	Dt.	03-01-2002	SCCL Hospital OP slip of petitioner from 03.01.2002 to 16.01.2002.
Ex.W-9	Dt.	21-01-2002	SCCL Hospital OP slip of petitioner
Ex.W-10	Dt.	17-01-2002	SCCL Hospital OP slip of petitioner from 17.01.2002 to 22-01-2002.
Ex.W-11	Dt.	19-01-2002	SCCL Hospital OP slip of petitioner from 30.01.2002 to 04.02.2002
Ex.W-12	Dt.	30-01-2002	SCCL Hospital OP slip of petitioner from 30.01.2002 to 04.02.2002
Ex.W-13	Dt.	30-01-2002	SCCL Hospital OP slip of petitioner from 30.01.2002 to 04-02-2002
Ex.W-14	Dt.	05-02-2002	SCCL Hospital OP slip of petitioner from 05.02.2002 to 12.02.2002
Ex.W-15	Dt.	08-02-2002	SCCL Hospital OP slip of petitioner from 08.02.2002 to 16-02-2002
Ex.W-16	Dt.	21-02-2002	SCCL Hospital OP slip of petitioner from 21.02.2002 to 26.03.2002
Ex.W-17	Dt.	10-05-2002	Fit certificate issued by Medical Officer, SCCL Hospital.
Ex.W-18	Dt.	23-03-2002	Discharge card for the period from 25.02.2002 to 23.03.2002 issued by SCCL Hospital
Ex.W-19	Dt.	18-05-2002	SCCL Hospital OP slip of petitioner from 18.05.2002 to 28.05.2002
Ex.W-20	Dt.	30-05-2002	SCCL Hospital OP slip of petitioner from 30.05.2002 to 05.06.2002
Ex.W-21	Dt.	11-06-2002	SCCL Hospital OP slip of petitioner from 10.06.2002 to 22.06.2002
Ex.W-22	Dt.	25.06.2002	SCCL Hospital OP slip of petitioner from 25-06-2002 to 20-08-2002

Ex.W-23	Dt.	07-09-2002	SCCL Hospital OP slip of petitioner from 07.09.2002 to 24.09.2002
Ex.W-24	Dt.	05-10-2002	SCCL Hospital to OP slip of petitioner from 05.10.2002 to 26.10.2002
Ex.W-25	Dt.	27.12.2002	SCCL Hospital OP slip of petitioner
Ex.W-26	Dt.	--	Pay slip for the month of August, 2002 showing 74 musters.
Ex.W-27	Dt.	19-10-2002	Termination order

FOR MANAGEMENT:-

Ex.M-1	Dt.	12-02-1998	Office copy of the charge sheet along with acknowledgement
Ex.M-2	Dt.	21-03-1998	Enquiry proceedings
Ex.M-3	Dt.	21-03-1998	Enquiry report
Ex.M-4	Dt.	12-10-1998	Acknowledgement of petitioner
Ex.M-5	Dt.	15-10-1998	Representation of the petitioner
Ex.M-6	Dt.	09-12-1998	Dismissal order
Ex.M-7	Dt.	21-02-2000	Memorandum of settlement
Ex.M-8	Dt.	28-06-2001	Photostat office order appointment of the petitioner temporarily for (12) months trial period.
Ex.M-9	Dt.	09-12-1998	Attested copy of dismissal order
Ex.M-10	Dt.	21-02-2000	Attested copy of memo of settlement.

नई दिल्ली, 25 अगस्त, 2021

का.आ. 595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 59/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2021 को प्राप्त हुआ था।

[सं. एल-22012/124/2006-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 25th August, 2021

S.O. 595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L and their workmen, received by the Central Government on 24.08.2021.

[No. L-22012/124/2006-IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/59/2007

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Amrit
C/o Shri D.N. Singh,
Area Secretary,
Koyla Shramik Sangh (CITU)
SECL, Korba Area,
PO Korba Colliery
Korba (Chhattisgarh) -495679 ... Workman

Versus

The Deputy General Manager,
SECL, Rajgamar Colliery,
P.O. Rajgamar,
Korba (Chhatisgarh)-495683 ... Management

AWARD

(Passed on this 26th day of July-2021)

As per letter dated 3/7/2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/124/2006/IR(CM-II). The dispute under reference relates to:

"***Whether the action of the management of SECL in reducing the rank and scale of pay from Cat.III to Cat.I of Shri Amrit is legal and justified? if not, to what relief is the workman entitled?"*** .

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in his statement of claim is that he was working in Category-III with the Management in Pawan Incline as a Trammer. He was shifted from underground work to overground work as a Surface Worker. His pay scale was reduced from what he was getting as an underground worker in Category-III, which is against law and against the provisions of National Coal Wage Agreement-8. He made a representation before the Management which was rejected. He raised a dispute in this respect, after failure of conciliation, the present reference was sent for adjudication. The workman has prayed that his pay be protected and arrears be given to him, holding reduction of his pay as illegal.

3. The case of the Management is that the workman was working as a Trammer in Category_III in Pawan Incline, Rajgamar Colliery from 1-9-1995. He filed an application on 27-4-1998 and requested the Management to grant him light job on Surface on the ground that he is unable to work in underground mines. According to the Management, the availability of Surface job is very few and is normally filled by female workers appointed on compassionate grounds as female workers cannot be deputed in underground mines. The Management considered the application of workman and deployed him at the Surface as Chowkidar Category-I. Since the workman was deployed from underground mines to surface work as Chowkidar, he was granted the pay scale of Chowkidar Category-1. According to the Circular No.C/SC/3270/1059 dated 21.1.1980, there is no provision of pay protection for light job opted by the workman at his own request. He has to be paid wages in the category on which he is posted. The Management has further pleaded that it has no objection if the workman desires to go back to his original post in the underground mines, if he feels like and get his earlier pay as Trammer restored. Accordingly the Management, has prayed for refusing the claim of the workman and answering the reference against the workman.

4. The workman has examined himself on oath as a witness. He has not proved any document.

5. The Management has examined its witness Shri A.K.Roy, Senior Manager Personnel. He could not be produced for cross-examination, hence his affidavit cannot be held in evidence. The Management has further examined Shri Lalit Kumar Kaurav, Assistant Manager Personnel and has been cross-examined by workman. The Management has proved documents (Exhibit M-1) failure of conciliation report sent by Assistant Labour Commissioner, (Exhibit M-2) application of workman to deploy him as overground worker on the grounds of his ill health. (Exhibit M-3) Office order deploying the workman as general mazdoor Category-1 from the post of Trammer Category-III, on his own request.

6. I have heard the arguments of learned counsel for workman Shri R.C.Shrivastava and Shri A.K.Shashi, learned counsel for the Management and have gone through the record as well.

7. The learned counsel for workman has relied on following case law **Narendra Kumar Chandla Vs. State of Haryana And Others** (1994) 4 SCC 460 held that:

> **"the employee was physically incapacitated by disease absorbed in a lower post, he was entitled to protection of the pay scale of his original post."**

8. **The reference is the point for determination, in the case in hand.**

9. The fact that the workman was working as a Trammer in the Mines as underground worker as Category-III Mazdoor and he was deployed as overground worker, Chowkidar in Category-1 is not disputed by the parties. Though the workman has tried to take a position that he was made to sign on a blank paper for the purposes of his deployment as Chowkidar but the document Exhibit M-2 which is proved by Management witness, shows that this was done at the written request of the workman. Hence the fact that this change in posting/category was done at the request of the workman himself.

10. It is also un-disputed that the workman, when he was working inside the mines as underground worker, he was in Category-III Mazdoor and when he was deployed as Chowkidar on the Surfact, he was given the status of Category-III Mazdoor and pay scale accordingly. The learned counsel for workman could not refer to any provisions granting protection of scale in National Coal Wage Agreement-8. In such a situation , he has referred to the case of Narendra Kumar Chandala(Supra). On this point in the case referred, the workman was Sub-Station Attendant in pay scale Rs.1400-2300, he was operated upon and his right arm was amputated. The Doctor recommended that he could assume his normal duties. The Management absorbed him as Carrier Attendant in pay-scale Rs.825-1300. In such a situation, Hon'ble the Apex Court held that he could be adjusted on the post of Lower Division Clerk by relaxing condition of his typing test and his pay-scale from Rs.1400-2300 be protected on his new post of Lower Division Clerk. The learned counsel for the Management has submitted on this point that this case law does not relate to Industrial Disputes Act,1947, moreover this is a direction of Hon'ble the Apex Court in the light of facts peculiar to the case. The case in hand is to be regulated by the provisions of National Coal Wage Agreement-8, which does not provide such a protection. He also submits that the change was made on the written request of the workman and if the workman feels, the Management is ready to shift him on his original post of Trammer Category-III in underground mines. Learned Counsel also submitted that the nature of work inside the mines underground and at surface is different. i.e. why workers working inside the mines are given wages more than those working on surface.

11. Since there is no provision for protection to pay in case of change of Category or nature of work given in National Coal Wage Agreement-8, the claim of the workman for pay protection seems to be not justified. Accordingly he is held not entitled to pay scale of Category-III General Mazdoor which he was drawing as an underground worker.

12. On the basis of above discussion, the action of Management in reducing the rank and scale of pay to the workman from Category-III to Category-I is held legal and justified and he is held entitled to no relief. The reference is answered accordingly.

13. On the basis of the above discussion, following award is passed:-

A. The action of the management of SECL in reducing the rank and scale of pay from Category-III to Category-I of Shri Amrit is legal and justified

B. The workman is held entitled to no relief.

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 अगस्त, 2021

का.आ. 596.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अलोए स्टील प्लांट ऑफ़ सेल, दुर्गापुर के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

(1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिदिर्ष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;

(2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

(4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रचालन के अध्यधीन था ऐसी विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-

(i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टयों को सत्यापित करने; या

(ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या

(iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-

(क) प्रधान या अव्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है ; या

(ख) ऐसे प्रधान या अव्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके

प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या अव्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वत: रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा ।

[सं. एस-38014/05/2021-एस एस-I]

मदन चौरसिया, अवर सचिव

New Delhi, the 27th August, 2021

S.O. 596.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of Alloy Steel Plant of SAIL, Durgapur from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

(1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees;

(2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;

(3) the contribution for the exempted period, if already paid, shall not be refundable;

(4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —

(i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or

(ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or

(d) make copies of or take extracts from any register, accountbook or other document maintained in such factory, establishment, office or other premises; or

(e) exercise such other powers as may be specified.

(6) In case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/05/2021-SS-I]

MADAN CHAURASIA, Under Secy.

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